ISSUE 6: Should this Docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendations in Issues 1-5, this Docket should remain open pending administrative approval, on an expedited basis, of a signed interconnection agreement or notice of adoption filed within 10 days of the Commission's decision at the Agenda Conference. Upon administrative approval of an agreement, or if no signed agreement or notice of adoption is filed within 10 days of the Agenda Conference, staff should be allowed to administratively close this Docket after the time for filing an appeal has run.

Staff recommends that the opportunity for reconsideration not be provided in this instance. Herein, the Commission is asked to address several motions that staff believes can be considered thinly veiled motions for reconsideration for which Commission rules do not provide for further reconsideration. See Rule 25-22.060, Florida Administrative Code. Furthermore, this proceeding has been conducted pursuant to the Telecommunications Act of 1996, which does not contemplate further review by the state commission of its own decisions in proceedings conducted pursuant to the Act. While Chapter 120, Florida Statutes, and Commission rules do provide for reconsideration of final orders, Section 120.80(13), Florida Statutes, also allows the Commission to adopt processes and procedures necessary to implement the Act. In this particular instance, staff believes that proper, timely implementation of this case consistent with the Act necessitates that the opportunity for reconsideration of the Commission's decisions on the issues addressed in this recommendation not be provided. **(Keating, McLean)**

STAFF ANALYSIS: If the parties file a signed agreement, staff recommends that the staff be allowed to review and administratively approve the final agreement if it complies with the Commission's Order and the Telecommunications Act, and to close the Docket. If the parties do not file a signed agreement within 10 days of the Agenda Conference, staff should be allowed to close this Docket administratively after the time for filing an appeal has run.

Staff recommends that the opportunity for reconsideration not be provided in this instance. Herein, the Commission is asked to address several motions that staff believes can be considered thinly veiled motions for reconsideration for which Commission rules do not provide for further reconsideration. See Rule 25-22.060, Florida Administrative Code. Furthermore, this proceeding

has been conducted pursuant to the Telecommunications Act of 1996, which does not contemplate further review by the state commission of its own decisions in proceedings conducted pursuant to the Act. While Chapter 120, Florida Statutes, and Commission rules do provide for reconsideration of final orders, Section 120.80(13), Florida Statutes, also allows the Commission to adopt processes and procedures necessary to implement the Act. In this particular instance, staff believes that proper, timely implementation of this case consistent with the Act necessitates that the opportunity for reconsideration of the Commission's decisions on the issues addressed in this recommendation not be provided.

FLORIDA PUBLIC SERVICE COMMISSION

VOTE SHEET

AUGUST 6, 2002

RE: Docket No. 001305-TP - Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.

ISSUE 1: Should the Commission grant Supra's Motion to Strike BellSouth's letter of October 30, 2001, to Blanca Bayó; Strike BellSouth's post-hearing position/summary with respect to Issue B; and to Alter/Amend Final Order pursuant to F.R.C.P. 1.540(B)?
RECOMMENDATION: No.

APPROVED

COMMISSIONERS ASSIGNED: Jaber, Baez, Palecki

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

PLAINTIFF'S EXHIBIT G

VOTE SHEET
AUGUST 6, 2002
Docket No. 001305-TP - Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.

(Continued from previous page)

ISSUE 2: Should the Commission grant Supra's Motion to Compel BellSouth to Continue Good Faith Negotiations of a Follow-Up Agreement?
RECOMMENDATION: No.

APPROVED

ISSUE 3: Should the Commission grant BellSouth's Motion for Expedited Commission Action?
RECOMMENDATION: The Motion should be granted, in part, and denied, in part, as set forth in the analysis portion of staff's July 25, 2002 memorandum.

APPROVED

ISSUE 4: Should Supra's July 22, 2002, Motion to Strike the July 15, 2002, Agreement filed by BellSouth be granted?
RECOMMENDATION: No. The Motion should be denied.

APPROVED

ISSUE 5: Is the Interconnection Agreement filed by BellSouth on July 15, 2002, compliant with the Commission's Orders in this Docket?
RECOMMENDATION: Yes. The Interconnection Agreement filed by BellSouth on July 15, 2002 complies with the Commission's Orders in this Docket. However, two sections of the Interconnection Agreement do not appear to

APPROVED

(Continued from previous page)

comply with the current state of the law. As such, staff recommends that two sections of the Interconnection Agreement be revised as identified in the analysis portion of staff's memorandum.

APPROVED

ISSUE 6: Should this Docket be closed?
RECOMMENDATION: No. If the Commission approves staff's recommendations in Issues 1-5, this Docket should remain open pending administrative approval, on an expedited basis, of a signed interconnection agreement or notice of adoption filed within 10 days of the Commission's decision at the Agenda Conference. Upon administrative approval of an agreement, or if no signed agreement or notice of adoption is filed within 10 days of the Agenda Conference, staff should be allowed to administratively close this Docket after the time for filing an appeal has run.

Staff recommends that the opportunity for reconsideration not be provided in this instance. Herein, the Commission is asked to address several motions that staff believes can be considered thinly veiled motions for reconsideration for which Commission rules do not provide for further reconsideration. See Rule 25-22.060, Florida Administrative Code. Furthermore, this proceeding has been conducted pursuant to the Telecommunications Act of 1996, which does not contemplate further review by the state commission of its own decisions in proceedings conducted pursuant to the Act. While Chapter 120, Florida Statutes, and Commission rules do provide for reconsideration of final orders, Section 120.80(13), Florida Statutes, also allows the Commission to adopt processes and procedures necessary to implement the Act. In this particular instance, staff believes that proper, timely implementation of this case consistent with the Act necessitates that the opportunity for reconsideration of the Commission's decisions on the issues addressed in this recommendation not be provided.

APPROVED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc.	DOCKET NO. 001305-TP ORDER NO. PSC-02-1096-FOF-TP ISSUED: August 9, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER RESOLVING PROCEDURAL MOTIONS AND ADDRESSING FILED INTERCONNECTION AGREEMENT

BY THE COMMISSION:

I. CASE BACKGROUND

On September 1, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for arbitration of certain issues in a new interconnection agreement with Supra Telecommunications and Information Systems, Inc. (Supra). BellSouth's petition raised fifteen disputed issues. Supra filed its response, and this matter was set for hearing. In its response Supra raised an additional fifty-one issues. In an attempt to identify and clarify the issues in this docket, issue identification meetings were held on January 8, 2001, and January 23, 2001. At the conclusion of the January 23 meeting, the parties were asked by our staff to prepare a list with the final wording of the issues as they understood them. BellSouth submitted such a list, but Supra did not, choosing instead to file on January 29, 2001, a motion to dismiss the arbitration proceedings. On February 6, 2001, BellSouth filed its response. In Order No. PSC-01-1180-FOF-TI, issued May 23, 2001, we denied Supra's motion to dismiss, but on our own motion ordered the parties to comply with the terms of their prior agreement by holding an inter-company Review Board meeting. Such a meeting was to be held within 14 days of the issuance of our order, and a report on the outcome of the meeting was to be filed with us within

10 days after completion of the meeting. The parties were placed on notice that the meeting was to comply with Section 252(b)(5) of the Telecommunications Act of 1996 (Act).

Pursuant to our Order, the parties held meetings on May 29, 2001, June 4, 2001, and June 6, 2001. The parties then filed post-meeting reports. Thereafter, several of the original issues were withdrawn by the parties. An additional twenty issues were withdrawn or resolved by the parties either during mediation or the hearing, or in subsequent meetings. Although some additional issues were settled, thirty-seven disputed issues remained.

We conducted an administrative hearing in this matter on September 26-27, 2001. On February 8, 2002, our staff filed its post-hearing recommendation for our consideration at the February 19, 2002, Agenda Conference. Prior to the Agenda Conference, the item was deferred.

On February 13, 2002, Supra filed a Motion asking that the item not be considered until additional legal briefing could be had addressing the impact of the decision of the United States Court of Appeals, Eleventh Circuit (hereinafter "11th Circuit"), Cir. Order Nos. 00-12809 and 00-12810, the consolidated appeals of BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Services, Inc., D.C. Docket No. 99-00248-CV-JOF-1 and BellSouth Telecommunications, Inc. v. WorldCom Technologies, Inc. And E.spire Communications, Inc., D.C. Docket No. 99-00249-CV-JOF-1, respectively. In the alternative, Supra requested oral argument on the impact of that decision on Issue 1 of our staff's recommendation. By Order No. PSC-02-0202-PCO-TP, issued February 15, 2002, the request for additional briefing was granted. Parties were directed to file their supplemental briefs by February 19, 2002. In rendering our final decision, we noted that we had considered the additional briefing.

Also on February 18, 2002, Supra filed a Motion for Rehearing, Motion for Appointment of a Special Master, Motion for Indefinite Deferral, and Motion for Oral Argument. BellSouth filed its response on February 21, 2002.

On February 21, 2002, Supra filed a Renewed Motion for Indefinite Stay of Docket No. 001305-TP, and an Alternative Renewed Motion for Oral Argument. On February 22, 2002, BellSouth filed its Response in opposition.

On February 27, 2002, Supra filed a Motion for Oral Arguments on Procedural Question Raised by Commission staff and Wrongful Denial of Due Process. BellSouth filed its Response in opposition on March 1, 2002.

By Order No. PSC-02-0413-FOF-TP (Final Order), issued March 26, 2002, we resolved the substantive issues presented for our consideration, as well as several procedural motions filed by Supra on February 18, 21, and 27. A few minor scrivener's errors were corrected by Order No. PSC-02-0413A-FOF-TP, issued March 28, 2002. Pursuant to the Notice of Further Proceedings set forth in Order No. PSC-02-0413-FOF-TP and Rule 25-22.060, Florida Administrative Code, any motion for reconsideration of the Final Order was due on April 10, 2002.

On April 1, 2002, Supra filed a Motion to Extend the Due Date for Filing Motion for Reconsideration of Final Order. By Order No. PSC-02-0464-PCO-TP, issued April 4, 2002, the Motion was denied. On April 8, 2002, Supra filed a Motion for Reconsideration of Commission Order No. PSC-02-0464-PCO-TP. By Order No. PSC-02-0496-PCO-TP, issued April 10, 2002, the Motion for Reconsideration was denied.

On that same day, April 10, Supra filed a Motion for Reconsideration of Denial of its Motion for Rehearing of Order No. PSC-02-0413-FOF-TP. Supra also filed a separate Motion for Reconsideration and Clarification of Order No. PSC-02-0413-FOF-TP, portions of which were identified as confidential. On April 17, 2002, BellSouth filed responses in opposition to both Motions.

Also on April 17, 2002, Supra filed a Motion to Disqualify and Recuse Commission staff and Commission Panel from All Further Consideration of This Docket and To Refer Docket to DOAH for all Further Proceedings. On April 24, 2002, BellSouth filed its response. This motion has been separately addressed.

Also on April 24, 2002, Supra filed a Motion to Extend Due Date for Filing Executed Interconnection Agreement and a Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion for Reconsideration for New Hearing. On May 1, 2002, BellSouth filed its responses. The extension was granted, in part, and denied, in part, by Order No. PSC-02-0637-PCO-TP, issued May 8, 2002. Thereafter, on May 15, 2002, BellSouth asked for reconsideration of that Order. Supra filed its response in opposition on May 22, 2002.

On April 24, 2002, Supra also filed a Motion to Strike and Reply to BellSouth's Opposition to Supra's Motion for Reconsideration for New Hearing. BellSouth filed its response in opposition on May 1, 2002.

On May 7, 2002, Supra filed a Motion for Leave to File Reply to BellSouth's Opposition to Motion to Strike, or in the Alternative, to Strike New Issues Raised in BellSouth's Opposition. On May 16, 2002, BellSouth filed its response in Opposition.

On May 13, 2002, BellSouth filed its Request for Leave to File Supplemental Authority.

On May 24, 2002, BellSouth filed a Motion for Reconsideration of Order No. PSC-02-0663-CFO-TP, wherein the Prehearing Officer denied confidential treatment of certain information contained in an April 1, 2002, letter to Commissioner Palecki.

On May 29, 2002, Supra filed a Motion for Reconsideration of Order No. PSC-02-0700-PCO-TP.

By Order No. PSC-02-0878-FOF-TP, issued July 1, 2002, we rendered our decisions on the identified procedural Motions and Motions for Reconsideration. Therein, we required the parties to file their final interconnection agreement complying with our decision by July 15, 2002.

On June 17, 2002, Supra filed a Motion to Strike BellSouth's letter of October 30, 2001, to Blanca Bayo; Strike BellSouth's post-hearing position/summary with respect to Issue B; and to Alter/Amend Final Order pursuant to F.R.C.P. 1.540(B). On June 28, 2002, BellSouth filed its response in opposition.

On July 8, 2002, Supra filed a Motion to Stay, which has been separately addressed by the Commission by Order No. PSC-02-1033-FOF-TP, issued July 30, 2002.

On July 15, 2002, Supra filed a Notice of Compliance with Order No. PSC-02-0878-FOF-TP, Notice of BellSouth's Refusal to Continue Negotiations Over Follow-Up Agreement, and Motion to Compel BellSouth to Continue Good Faith Negotiations on Follow-Up Agreement. On July 18, 2002, BellSouth filed its Response in Opposition.

Also on July 15, 2002, BellSouth filed an interconnection agreement, along with an Emergency Motion for Expedited Commission Action. On July 22, 2002, Supra filed its Response in Opposition.

Also on July 22, 2002, Supra filed a Motion to Strike the proposed interconnection agreement submitted by BellSouth on July 15, 2002. On July 30, 2002, BellSouth filed its Response in Opposition.

Set forth herein is our determination on the Motions to Strike and Amend Final Order, Motion to Compel negotiations, Motion for Expedited Commission Action, and the filed interconnection agreement.

II. JURISDICTION

This Commission has jurisdiction in this matter pursuant to Section 252 of the Act to arbitrate interconnection agreements, as well as Sections 364.161 and 364.162, Florida Statutes. Section 252 states that a State Commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration consistent with the Act and its interpretation by the FCC and the courts, we utilize discretion in the exercise of such authority. In addition, Section 120.80(13)(d), Florida Statutes, authorizes this Commission to employ procedures necessary to implement the Act.

We retain jurisdiction pursuant to Section 252 (e) of the Telecommunications Act of 1996 for purposes of approving a final arbitrated interconnection agreement. See also GTE Florida v. Johnson, 964 F. Supp. 333 (N.D. Fla. 1997)(stating, "this court has jurisdiction only 'to determine whether the agreement or statement meets the requirements of' the Act."); *citing* GTE South, Inc. v. Breathitt, 963 F. Supp. 610, 1997 WL 202470 (E.D. Ky. 1997); GTE South, Inc. v. Morrison, 957 F. Supp. 800, 1997 WL 82527 (E.D. Va. 1997); GTE Northwest, Inc. v. Nelson, 969 F. Supp. 654 (W.D. Wash. 1997); GTE Northwest, Inc. v. Hamilton, Civil Action No. 97-6021 (D. Ore. March 28, 1997); GTE Southwest, Inc. v. Wood, Civil Action No. 97-3 (S.D. Tex. March 13, 1997)(stating "the Court is persuaded that § 252(e)(6) does not extend the scope of review to determinations prior to the stage of approval or rejection of the agreement or statement.")

III. MOTION TO STRIKE BELLSOUTH'S LETTER OF OCTOBER 30, 2001, TO BLANCA BAYO; STRIKE BELLSOUTH'S POST-HEARING POSITION/SUMMARY WITH RESPECT TO ISSUE B; AND TO ALTER/AMEND FINAL ORDER PURSUANT TO F.R.C.P. 1.540(B)

A. ARGUMENTS

SUPRA

Supra notes that our Order No. PSC-01-1401-PCO-TP (Order Establishing Procedure) sets forth the procedures to be followed by the parties in this docket. Supra draws particular attention to the pertinent requirements on page 8 of the Order, that "each party shall file a post-hearing statement of issues and positions" and that "if a party fails to file a post hearing statement in conformance with Rule 28-106.215, Florida Administrative Code, the party shall have waived all issues and may be dismissed from the proceeding." Supra observes that on September 25, 2001, we entered Order No PSC-01-1926-PHO -TP, which included a new issue, noted as Issue B, that asked: "Which agreement template shall be used as the base agreement into which the Commission's decision on the disputed issues will be incorporated." Supra contends that while BellSouth briefly discussed Issue B in its post-hearing brief, it failed to provide a summary of the issue as required by the Order Establishing Procedure.

Supra states that in reviewing documents received as a result of a public records request made to this Commission, it believes that certain e-mails indicate that in October of 2001, Wayne Knight, the lead staff attorney in this docket, initiated a communication with Mike Twomey of BellSouth, for the purpose of informing Mr. Twomey that BellSouth had failed to include a position for Issue B in its post-hearing brief. Supra maintains that Mr. Twomey subsequently submitted a letter to Ms. Bayo as a result of this communication, with a position statement for Issue B. The letter, says Supra, was not a motion or a request for relief, nor did it cite any law or other authority in support of such filing. Supra contends that in our Final Order in this docket, Order No. PSC-02-0413-FOF-TP, issued March 26, 2002, we adopted BellSouth's late-filed position summary with respect to Issue B.

Supra asserts that the letter should be stricken from the record because it believes: (a) the filing was not authorized and procedurally improper; (b) it is the product of a communication

initiated by a Commission staff employee; and (c) the filing violates the Commission's Order Establishing Procedure.

Additionally, maintains Supra, BellSouth's position on Issue B should be stricken and deemed waived pursuant to the Order Establishing Procedure. Supra cites past Commission Orders and looks to Docket No. 000731-TP to buttress its argument. Supra maintains that in that case, AT&T's failure to file a post-hearing statement addressing an issue led to a waiver of its position on that issue. Likewise, contends Supra, the failure to timely file a post-hearing statement regarding three issues in Docket No. 000649-TP, or to request leave to file such, led to the exclusion of those positions from our consideration in rendering a decision. Supra believes that a letter attempting to supplement the record, filed after the post-hearing briefs, is procedurally improper and should not be allowed.

Supra also points to several cases for the proposition that papers filed, which are not authorized or violate rules of procedure, are subject to be stricken. See Hicks v. Hicks, 715 So.2d 304, 305 (Fla 5th DCA 1998)(where the Court held that a motion filed by an attorney which violated Rule 2.060, Fla.R.Jud.Admin., was voidable and subject to being stricken. Supra argues that BellSouth's October 30, 2001, letter was likewise procedurally improper, and not authorized by either the rules or the Order Establishing Procedure. As such, claims Supra, the letter should be stricken and BellSouth's position on Issue B waived in accordance with the Order Establishing Procedure and Supra's cited precedence.

Supra also asks us to change the Final Order to reflect Supra's position on Issue B. Supra believes Florida Rule of Civil Procedure, 1.540(b) supports this request, where it reads in pertinent part:

> (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party of a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: ... (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . . The motion

> shall be made within a reasonable time, and for reasons (1), (2), and (3) not more that 1 year after the judgment, decree, order, or proceeding, was entered or taken. . . .

Supra believes that in accordance with prior decisions, this rule is to be liberally construed to allow a party to be relieved of an order which in part, was procured through misconduct discovered after entry of the order. See Lacore v. Giralda Bake Shop, Inc., 407 So.2d 275, 276 (Fla. 3d DCA 1981); In re: Adoption of a Minor Child, 593 So.2d 1209 (Fla. 1991) Here, Supra maintains that the communication between BellSouth and Wayne Knight assisted BellSouth in the litigation of this docket after it had missed a substantive deadline, and was done without the knowledge of Supra. This, says Supra, can only be characterized as misconduct. Supra also believes that BellSouth engaged in misconduct by participating in the communication regarding a substantive deadline, not adequately disclosing the events leading to its October 30, 2001, letter, and in late filing an amendment to its post-hearing brief.

Supra contends that had Mr. Knight not communicated BellSouth's failure to comply with a substantive deadline, it would have prevailed on the issue. As it believes Mr. Knight's communication goes to the merits of the issue, Supra maintains that the Commission's ruling on Issue B should be reversed, and changed to reflect Supra's position on the issue.

BELLSOUTH

BellSouth believes that this motion, along with the seventeen (17) others filed by Supra to date, have been filed for the purpose of delaying operating under a new interconnection agreement. BellSouth characterizes its October 30, 2001, letter to Blanco Bayo, as being meant to correct an unintentional scrivener's error in its post hearing brief as well as the portion of BellSouth's brief relating to Issue B.

BellSouth first contends that Supra waived any objection to the October 30, 2001, letter, and contends that equity dictates that Supra's motion be denied. BellSouth states that Supra received both its post-hearing brief and the October letter, yet waited until after the Commission staff issued a recommendation, after we issued a Final Order, and after we ruled on Supra's post-hearing motions, including a motion for reconsideration of Issue B, before now claiming that the letter was procedurally improper.

BellSouth believes that in waiting seven months after BellSouth corrected its scrivener's error, and after this Commission resolved all of Supra's post-hearing motions, Supra has waived any objection to the letter or to BellSouth's post hearing brief. BellSouth characterizes Supra's motion as an untimely request for us to reconsider and reverse ourselves on Issue B.

BellSouth also contends that it would be inequitable to grant Supra's requested relief at this point in time, as it believes the proceedings are complete and BellSouth would be left without an opportunity to cure any purported procedural defect. BellSouth believes that if there was an error, it could have been cured if had Supra raised its objection in a timely manner.

BellSouth's second argument is that it did not violate the procedural order or otherwise waive its right to assert a position on Issue B. BellSouth maintains that it submitted a post-hearing statement on all issues in the arbitration, including Issue B; that it submitted summaries for all other issues; and the October 31, 2001, letter corrected its scrivener's error.

According to BellSouth, the procedural order, Order No. PSC-01-1401-PCO-TP, provides that a party is required to file a post-hearing statement of issues and positions pursuant to Rule 28-106.215, and that the failure to file this post-hearing statement results in a waiver of all issues and potential dismissal from the proceeding. The Rule, asserts BellSouth, makes no mention of summary position statements. BellSouth maintains that it filed a post hearing statement, and thus complied with the procedural order. BellSouth also claims that Supra's reference to Issue L of the BellSouth/AT&T arbitration actually supports its argument. There, says BellSouth, it was found to have waived its position on issue L because it failed to "present any evidence on the issue at hearing or in its brief." In the instant docket, BellSouth maintains that it has done both. BellSouth also distinguishes Order No. PSC-01-0824-FOF-TP, as cited by Supra, noting that while our decision there was predicated on its failure to address three issues in its post-hearing brief, its failure to file a summary position statement was not at issue.

As a tertiary matter, BellSouth maintains that its October 30, 2001, letter was procedurally proper. Along with its assertion that Supra waived its right to BellSouth's correction of what it deemed an oversight, BellSouth states that parties routinely submit letters to this Commission to correct scrivener's errors or other

errors that do not affect the substance of an argument. BellSouth notes that recently Florida Cable Telecommunications Association, Inc. and Time Warner Telecom of Florida, L.P. inadvertently omitted their summary position statements in their original post-hearing briefs due to a scrivener's error, and on June 18, 2002, they filed a letter with us to include a corrected post-hearing brief that specifically included their summary position statements. BellSouth also notes that Supra, in this docket on May 8, 2002, filed a letter instead of a motion to correct errors in one of its previous filings. BellSouth asserts that its letter of October 30, 2001, similar to the letters of FCCA and Time Warner, and of Supra, did not affect or modify any of the substantive arguments that BellSouth made in its post-hearing brief, but simply summarized the arguments set forth in its brief. As such, says BellSouth, the letter was proper and should not be stricken.

BellSouth also believes that the letter actually complies with Rule 28-106.204(1), to the extent that it seeks affirmative relief and is in writing. Citing Mendoza v Board of County Commissioners/Dade County, 221 So. 2d 797, 798(Fla. 3rd DCA 1969) for the notion that "courts should look to the substance of a motion and not to the title alone," BellSouth asserts that its letter is similar to those filed by Supra in this docket seeking affirmative relief. Thus, according to BellSouth, Rule 28-106.204's requirement that responses to motions must be submitted within seven days serves to time-bar Supra's instant motion.

BellSouth further contends that Supra's request for a modified order pursuant to Rule 1.540(b) should be denied. BellSouth contends that Supra does not meet the standard to obtain relief for newly discovered evidence because it does not believe that Supra's evidence would change the result in a new trial, and it believes Supra's motion is untimely. Further, BellSouth asserts that Supra does not meet the standard to obtain relief for misconduct because no misconduct occurred, and we have previously determined that no misconduct occurred. BellSouth also asserts that the conduct for which Supra now complains did not prevent Supra from presenting its case.

BellSouth also argues that Supra's request cannot be granted under Rule 1.540(b), and that its Motion under this rule is barred by the doctrine of *res judicata*, because final judgment in this matter has already been rendered.

B. DECISION

The crux of Supra's contention is that BellSouth was improperly allowed to modify its post-hearing statement, and that had BellSouth not been allowed to do so, BellSouth's position on Issue B would have been waived in accordance with the Order Establishing Procedure, Order No. PSC-01-1401-PCO-TP. We note that similar language is contained in the Prehearing Order in this Case, Order No. PSC-01-1926-PHO-TP. As such, Supra believes that its argument on this issue would have carried the day on Issue B; thus, the Final Order should be modified to so reflect a decision in Supra's favor.

Supra, however, misinterprets the provisions of the Order Establishing Procedure as they relate to the filing of post-hearing statements. Specifically, the Order in this case states, in pertinent part:

> Each party shall file a post-hearing statement of issues and positions. ***A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement.*** If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. ***If a party fails to file a post-hearing statement in [conformance with the rule][1], that party shall have waived all issues and may be dismissed from the proceeding.*** (Emphasis added)

Order No. PSC-01-1401-PCO-TP at pg. 8. See also Order No. PSC-01-1926-PHO-TP at p. 8. The Order does clearly state that a summary of a party's position is required. However, the Order does not indicate that failure to include the **summary** results in waiver of a party's position; rather, the Order reflects that failure to file a **post-hearing statement** results in waiver. BellSouth did, in fact, timely file a post-hearing statement addressing all issues, including Issue B. The company simply neglected to include a summary of its post hearing statement for Issue B. Thus, based on the provisions of the Order Establishing Procedure, as well as the

[1]Bracketed portion is omitted in subsequent Prehearing Order, because the reference to conformance with "the rule" pertains to former Rule 25-22.056, F.A.C., which was repealed.

superceding Prehearing Order, BellSouth did not waive its position on Issue B. While this Commission has determined that parties have waived their positions on specific issues by failing to file a post-hearing statement on an issue, we are unaware of any instance where we have determined that a party waived its position on all issues because it failed to file a post-hearing statement on one issue. Furthermore and directly to the issue at hand, we have not deemed a party to have waived their position on an issue through inadvertent omission of the summary.

As for our staff's decision to contact BellSouth to identify the omission of the summary, we believe that our staff acted properly in identifying an error, that can only be characterized as administrative, to the responsible party, because the oversight did not have any dispositive impact on the issue or the case. One-on-one contact between our staff and a party to discuss a non-substantive matter, such as the omission of the summary of BellSouth's position, is not prohibited by Rule 25-22.033, Florida Administrative Code or our own Administrative Procedures Manual 13.10.[2]

Furthermore, we note that, historically, the requirement for a summary has generally been included in the post-hearing procedural requirements largely for the administrative ease of our staff in developing the format of its post-hearing recommendations. The summary does not address the specifics of the parties' arguments, which are more fully set forth in the post-hearing statement itself and analyzed by our staff in its recommendation. Thus, the inclusion or omission of the summary would not impair the ability of this Commission to consider the parties' arguments, nor would it be prejudicial to either party in the case. It merely impacts the manner in which the parties' position is summarized for purposes of the preferred format for post-hearing recommendations. In other words, it is inconsequential to the disposition of the matter at issue.

Based on the foregoing, Supra's Motion to Strike BellSouth's letter of October 30, 2001, to Blanca Bayo; Strike BellSouth's post-hearing position/summary with respect to Issue B; and to

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[2]It is noted that this situation is not unlike our staff's inquiry as to Supra's omission of its prehearing statement position on Issue 45, which resulted in Supra submitting its supplemental prehearing statement, without specifically requesting leave to do so, on September 7, 2001. Prehearing statements in the case were originally due August 22, 2001.

Alter/Amend Final Order pursuant to F.R.C.P. 1.540(B) is hereby denied.

IV. MOTION TO COMPEL BELLSOUTH TO CONTINUE GOOD FAITH NEGOTIATIONS OF A FOLLOW-UP AGREEMENT

A. ARGUMENTS

SUPRA

After laying out its summary of the procedural and factual background of this docket, Supra maintains that on June 12, 2002, the day after our decision on Supra's Motion for Reconsideration, Supra sought to commence good faith negotiations with BellSouth regarding a follow-on agreement. Supra also maintains that it received for the first time on June 13, 2002, an e-mail version of BellSouth's latest proposed interconnection agreement, and later on June 18, 2002, a second amended version. Supra asserts that beginning on June 17, 2002, and continuing through July 15, 2002, the parties met via telephone on numerous occasions in order to negotiate and resolve final language to be used in the agreement. Supra claims that there have been disputes over previously agreed upon issues because concepts were agreed to without reference to particular language changes in any template agreement.

Supra believes that the time period for the parties to file a final agreement was simply inadequate. It also asserts that BellSouth has not always been cooperative in negotiating final language in good faith, and that BellSouth's actions in refusing to negotiate in good faith do not comply with the Telecommunications Act of 1996, nor the spirit and intent of this Commission's Order No. PSC-02-0878-FOF-TP. Supra states that it would be impossible to draft a follow-on agreement by July 15, 2002, which accurately incorporates the parties' prior agreements, together with our substantive rulings. Further, says Supra, BellSouth refuses to continue negotiations without a directive from us to do so. Therefore, Supra requests an Order compelling BellSouth to return to the bargaining table and provide the parties a reasonable amount of time thereafter to complete negotiations.

BELLSOUTH

BellSouth maintains that the agreement sent to Supra on June 13, 2002, incorporated the changes required by our decision on the

motions for reconsideration. BellSouth also notes at least three other versions of the agreement that it had sent to Supra. BellSouth also claims that the parties' meetings of June 17 and 24, 2002, were devoid of substance, as on one occasion, Supra was not prepared, and in the other instance, Supra's counsel was not available. BellSouth also demonstrates through Exhibit L that it believes only about one third of the ordered issues were discussed. It also claims that Supra spent time disputing and discussing issues which the parties represented to this Commission as either being resolved or withdrawn. BellSouth notes that Supra at no time proposed language changes to any of the templates provided by BellSouth. Furthermore, although Supra claims it could not come up with an agreement which complied with the settled issues and the Commission's rulings, BellSouth believes its July 15, 2002, filing does just that.

BellSouth contends that it is Supra who is unwilling or unable to negotiate in good faith by being unprepared for negotiations or revisiting settled issues, and notes that Supra did not seek reconsideration of the Order's fourteen day filing requirement, choosing instead to ignore our order. BellSouth asks, therefore, that we deny Supra's request for relief.

B. DECISION

The record of this case reflects that BellSouth originally sent Supra a proposed interconnection agreement in September of 2000, nearly two years ago. In March of 2002, after the Agenda in which we originally decided the disputed issues, BellSouth apparently sent Supra an electronic copy of the proposed interconnection agreement. Thereafter on April 25, 2002, BellSouth filed a version with this Commission purporting to comply with our decision in PSC-02-0413-FOF-TP. On June 13, 2002, after our Agenda deciding the issues on reconsideration, BellSouth again apparently sent Supra a version of the agreement incorporating our changes, with an amended version submitted to Supra on June 18, 2002. Also on June 18, 2002, BellSouth apparently provided to Supra a list of each arbitrated issue and how it was resolved. Supra has had ample opportunity to become familiar with BellSouth's agreement template and to ascertain what parts of the agreement would require modification, both to comply with the parties agreed upon and unarbitrated issues, as well as those issues decided by this Commission.

As early as May 8, 2002, and pursuant to Order No. PSC-02-0637-PCO-TP, Supra was aware that it would have fourteen days after we ruled on Supra's Motion for Reconsideration of our decision on the merits of the case to execute an interconnection agreement. In seeking additional time to file the agreement, Supra stated that it did not want to have to negotiate language for the follow-on agreement twice. This desire not to negotiate language at that time did not relieve Supra of the obligation to familiarize itself with the language of the agreement, prepare alternative language, and generally become conversant on the issues given the time period afforded the parties. The parties' awareness of the time constraints also meant that the obligation was on both parties to provide the time and resources necessary to complete the task as ordered by this Commission. Neither party is a virgin to the negotiation and arbitration process, and both are well aware of the back and forth dialogue that ensues in situations such as this, as well as the occasional need to review positions and issues with other persons in their respective organizations.

Supra provided neither the time nor resources necessary to complete the negotiation process and file an agreement on July 15, 2002, as ordered by this Commission. By way of example, a review of the parties' e-mails reveals that on June 18, 2002, Greg Follensbee of BellSouth noted that because of the time constraints, he and Parkey Jordan, also of BellSouth, would clear their calendars all of the following week in an attempt to finish reviewing the proposed agreement. The parties had not discussed substantive issues in their June 17, 2002, meeting. The meeting of June 24, 2002, was cancelled due to an emergency that required the attention of Supra's outside counsel. No meeting was held on the following day. Supra suggested meeting on the following Wednesday, a day it knew, or should have known, it was deposing BellSouth's negotiator Greg Follensbee in another arbitration. Then, Supra indicated that its own negotiator, David Nilson, would be unavailable Friday, leaving outside counsel only able to discuss a few issues.

Save a discussion on June 28, 2002, indicating that in paragraph 16 of the General Terms and Conditions, the word "shall" should be changed back to "may," we find no example of Supra proposing language for inclusion in this agreement. It is clear that no alternative language was filed by Supra on the required date, July 15, 2002. If Supra continued to disagree with BellSouth's interpretations of issues and inclusive language, Supra could have formulated its own language and submitted that to this

Commission in an attempt to comply with our Order. This was certainly possible, as demonstrated by BellSouth's filing.

Finally, we were very clear that the signed agreement must be filed by July 15, 2002. There was no contemplation of further extensions for the parties to negotiate. We were explicit that we found it imperative that a new agreement be timely filed.

Therefore, upon consideration of the foregoing, Supra's Motion to Compel BellSouth to Continue Good Faith Negotiations of a Follow-Up Agreement is denied.

V. MOTION FOR EXPEDITED COMMISSION ACTION

A. ARGUMENTS

BELLSOUTH

BellSouth asserts that after two years, it is now time for a final resolution of this case. BellSouth emphasizes that this matter has been to hearing, this Commission has resolved the issues, addressed reconsideration, as well as numerous procedural motions, and we are now presented with an interconnection agreement that complies with our decisions in the case. BellSouth contends that in keeping with its actions throughout this case, Supra has refused to reasonably participate in negotiations to prepare the final arbitrated agreement, in spite of numerous scheduled negotiation meetings, and has consequently refused to sign the version of the agreement prepared and submitted by BellSouth.

BellSouth notes that as of the morning of July 15, 2002, the date upon which the final signed agreement was due, Supra had only identified four arbitrated issues, Issues 1, 10, 11 A & B, and Issue 49, upon which it could not agree to final language with BellSouth. While discussions between the parties resulted in some modifications, disagreement still remains on these issues. BellSouth indicates that while Issue 19 is also at issue, Supra had stated that it simply needed more time to review BellSouth's proposed language to address this issue, but did not yet have any specific objection to the language. As of July 15, 2002, BellSouth asserts that Supra had not even mentioned 24 of the issues addressed through our arbitration.

BellSouth acknowledges Supra's contentions that engaging in the negotiation of a new interconnection agreement is a daunting,

arduous task, but emphasizes that Supra has not used the considerable time available since our final arbitration decision to engage in the discussions necessary to develop the final agreement. BellSouth contends that this Commission established a very clear deadline for the filing of the parties' interconnection agreement; Supra has "made little effort to review an agreement that BellSouth worked hard to prepare" and has not been prepared to participate in scheduled negotiation meetings. Motion at p. 9.

BellSouth claims that a new interconnection agreement must be approved expeditiously to prevent further harm to BellSouth. The company contends that Supra receives wholesale services from BellSouth for over 300,000 customers. According to BellSouth, Supra receives payment from its customers for the services rendered to them, but does not pay BellSouth for the wholesale services BellSouth has provided to Supra. BellSouth contends that this has an adverse effect on competition in the state, because Supra is able to obtain an advantage over other competitive local exchange carriers (CLECs) that do timely pay their bills. Due to this advantage, BellSouth believes that Supra is able to devote more resources to advertising than would a similarly-situated CLEC that pays its bills.

BellSouth notes that under the Reservation of Rights Clause in the new agreement, Section 25.1, execution of and operation under the new agreement does not waive either parties' rights to pursue appellate relief. Thus, BellSouth emphasizes that either party will be able to continue to seek relief through the appellate courts, and Supra will not be harmed because its appellate rights will not be affected.

For the foregoing reasons, BellSouth requests the following specific relief:

1. A decision by this Commission on its Emergency Motion for Expedited Commission Action at the first available Agenda Conference;

2. Supra should be required by us to take one of the following actions within seven (7) days of the Agenda Conference decision:

A. Sign the new agreement filed by BellSouth on July 15, 2002; or

B. Pursuant to 252(i) of the Act, opt into an existing agreement entered into by BellSouth and approved by the Commission, subject to the requirements of 47 C.F.R. § 51.809.

3. We should order that, if Supra does not take one of the actions identified above within 7 days of the Agenda Conference decision, the existing agreement between BellSouth and Supra is immediately deemed terminated and declared null and void. (Motion at p. 14.)

BellSouth also offers an alternative request for relief:

1. We should order the parties to immediately begin operating under the agreement filed by BellSouth on July 15, 2002, as of the date of the Agenda Conference at which BellSouth's motion is decided; or

2. We should order that BellSouth is relieved of the duty to provide services to Supra as of the date of the Agenda Conference.

In addition, BellSouth asks us to sanction Supra for bad faith, award BellSouth attorneys' fees, and provide any other relief we find appropriate.

BellSouth notes that there is precedent for the action it requests. In an Order from the California Public Utilities Commission, Decision No. 01-06-073, 2001 Cal. PUC LEXIS 600, issued June 28, 2001, wherein the parties were directed to either sign PAC Bell's proposed agreement, terminate the existing agreement, or Supra was to opt into an existing agreement. The parties chose to terminate the agreement.

SUPRA

Supra contends that it has devoted hundreds of man-hours to reviewing BellSouth's proposed agreement, reviewing the parties' prior agreements, reviewing our orders, documenting problems with the proposed agreement, and attempting to negotiate with BellSouth. Supra contends that BellSouth's request to expedite approval of the unilaterally filed agreement is a "gaming tactic" designed to have this Commission force an unacceptable agreement upon Supra.

Supra further contends that BellSouth's request for expedited treatment is made in bad faith, because BellSouth has not even attempted to negotiate acceptable language with Supra and has failed to properly reflect the areas on which the parties did agree prior to arbitration. Supra contends that this motion is designed to avoid due process in an effort to quickly escape the parties' current agreement. Supra maintains that the July 15, 2002, version of the agreement is "riddled with mistakes, inaccuracies and other language. . . ." For these reasons, Supra asks that the Motion for Expedited Commission Action be denied.

B. DECISION

This Docket was opened on September 1, 2000. The Final Order on Arbitration was issued in this Docket on March 26, 2002. The Order on the parties' various procedural motions and motions for reconsideration, Order No. PSC-02-0878-FOF-TP, was issued July 1, 2002. Therein, we clearly stated:

> As noted by Supra, we have the authority to show cause a party which fails to sign an arbitrated interconnection agreement in the event there is no good cause for failing to execute the agreement. We now place the parties on notice that if the parties or a party refuses to submit a jointly executed agreement as required by Order No. PSC-02-0637-PCO-TP and Order No. 02-0143-FOF-TP within fourteen (14) days of the issuance of a final order on Supra's Motion for Reconsideration, we may impose a $25,000 per day penalty for each day the agreement has not been submitted thereafter in accordance with Section 364.285, Florida Statutes.

Order at p. 65. The parties have had ample time in which to reach an agreement on a final interconnection agreement. Based on the time that has passed, the exhibits attached to BellSouth's

pleading, and the numerous procedural motions filed in this case by Supra, it appears to us that Supra has devoted insufficient resources to the negotiation of a final agreement -- perhaps intentionally.

While we clearly have the authority to sanction or fine Supra for its failure to sign an agreement, or even to submit its own version of an agreement, by July 15, 2002, in this circumstance, the best remedy is simply to impose BellSouth's primary request for relief, which is that Supra either sign the agreement proposed by BellSouth, opt into another existing, approved agreement, or the existing agreement will be considered terminated, null, and void. We shall, however, extend of the time requested by BellSouth from seven to 10 days, which seems more reasonable. Additional time will allow for some additional discussion between the parties, sufficient time to get the required signatures and have the agreement filed, or for Supra to make a determination as to which other existing agreement it may wish to adopt.

We emphasize that the agreement the parties continue to operate under was approved by this Commission. Section 2.3 of that Agreement states that should the parties petition the Commission for arbitration of unresolved issues, the parties would encourage the Commission to resolve the disputed issues prior to the expiration of the current agreement. If that did not occur, the parties agreed to continue to operate under the terms of the "current" terminated agreement until the subsequent agreement became effective. The agreement clearly contemplated that the current agreement would eventually terminate. But for the Supra's apparent failure to devote sufficient resources to negotiating a new agreement reflecting our arbitration decisions, there might very well be a subsequent, executed agreement for us to approve. The "current" agreement also clearly contemplates that both parties would endeavor to resolve any outstanding issues in order to develop a subsequent agreement. That has not occurred in this case; therefore, we shall require that the "current" agreement be terminated, including the provisions of Section 2.3, which require that the parties continue to operate under the terms of the current agreement pending approval of a new agreement. As noted by BellSouth, the California Commission has taken similar action in a similar situation under the same federal Telecommunications Act.

Based on the foregoing, we hereby require the parties to file a signed version of the interconnection agreement within 10 days of our decision at the August 6, 2002, Agenda Conference. If the